

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ALEX A., a Person Coming Under the  
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

ALEX A.,

Defendant and Appellant.

In re J.A., et al., Persons Coming Under the  
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

MELISSA A.,

Defendant and Appellant.

F069740

(Super. Ct. No. 515764)

**OPINION**

F069905

(Super. Ct. Nos. 515763 & 515764)

APPEALS from orders of the Superior Court of Stanislaus County. Ann Q. Ameral, Judge.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant Alex A.

Elaine Forrester, under appointment by the Court of Appeal, for Defendant and Appellant Melissa A.

John P. Doering, County Counsel, and Carrie M. Stephen, Deputy County Counsel, for Plaintiff and Respondent.

-ooOoo-

Melissa A. (mother) has two sons, J.A. and Alex J.A. (Alex). J.'s biological father is Mohammed B. (Mohammed), while Alex's father is Alex R.A. (father). Mother appeals from an order terminating her parental rights to J. and Alex, while father separately appeals from an order terminating parental rights to Alex. (Welf. & Inst. Code, § 366.26).<sup>1</sup> Mother, in her appeal, contends the juvenile court's finding that her sons are likely to be adopted is not supported by substantial evidence. Father raises no arguments of his own in his appeal, but joins in and adopts by reference mother's arguments insofar as they inure to his benefit. Finding no merit to mother's contention, we affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

J. and Alex (the boys) first became dependents in July 2010, when a dependency petition filed the prior month under section 300, subdivision (b) was sustained. Mother, Mohammed, and father were given reunification services. At the disposition hearing, one-year-old Alex was released to mother's custody but removed from his father's, while five-year-old J. was removed from the custody of mother and Mohammed. J. remained in foster care until November 2011, when he was released to mother's custody. When the dependency was dismissed on April 18, 2012, mother was awarded sole legal and

---

<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

physical custody of J., while mother and father, who are legally married, were awarded joint custody of Alex.

Less than three months later, on July 9, 2012, the Stanislaus County Community Services Agency (Agency) received a referral alleging that nearly three-year-old Alex was found unattended outside his home while his parents slept. After father admitted he was rarely at the house due to frequent arguments between himself and mother, and mother and father tested positive for methamphetamines and other substances, the Agency placed Alex and nearly seven-year-old J. in protective custody and moved them to a foster home.

The Agency filed a dependency petition on July 19, 2012, alleging the boys came under section 300, subdivision (b), as they were at substantial risk of suffering serious physical harm or illness as a result of mother's and father's longstanding issues with domestic violence and substance abuse, prior history of involvement with child welfare, and failure to benefit from services that had been provided to them previously.<sup>2</sup> The juvenile court subsequently detained the boys.

The social worker's report prepared for the jurisdiction/disposition hearing stated that the boys were both in good health and developmentally on target for their age. J. had a physical examination on August 10, 2012; he was diagnosed with ADHD with insomnia, and continued to take Vyvanse and Mirtazapin for ADHD. J. was in the second grade; according to school staff, he was well-behaved and doing well in class. The boys were referred for a mental health and development assessment. In a June 2010 social worker's report from the prior dependency case, it was noted that Alex's father

---

<sup>2</sup> The Agency later filed a first amended petition which added allegations under section 300, subdivision (b), that Mohammed had not maintained a relationship with J. and reunification services in the prior dependency were terminated after he failed to successfully complete them, and under section 300, subdivision (g), that J. was left without any provision for support and Mohammed's whereabouts were unknown.

was the only father J. had known. It was further noted in the June 2010 report that J., then age four, had a history of behavioral problems that were believed to be related to his neglect while in the care of mother and Alex's father. Alex's father admitted he used to be "really rough" with J. and would hit him frequently as a form of discipline. J. was also fed inconsistently while in mother's care and, when he was first in a voluntary foster placement, would hoard food and eat as much as he could.

On August 30, 2012, mother waived her right to a hearing and submitted on the reports, while father submitted an offer of proof. The juvenile court found the first amended petition's allegations true and adjudged the boys dependents. Reunification services were ordered for mother and father, but not for Mohammed.

The status review report for the six-month review hearing stated that the boys had moved to a new foster home on January 22, 2013, where they were doing well. J. had been prescribed eyeglasses for far-sightedness and was awaiting treatment for dental cavities. He was in regular education classes, but had an Individualized Education Plan (IEP). He received special education services in the area of speech and language 25 minutes per week and resource support services 40 minutes twice per week. The last IEP meeting was held on December 11, 2012, which mother attended. The IEP report stated: "J[.] has shown growth in confidence and ability. He still needs strong support from all sides with emphasis on reading out loud. Math skills will improve when he learns addition/subtraction combinations. J[] is enjoyed by everyone. We love him." J. was described as a handsome young boy who was somewhat quiet and introverted; he enjoyed playing video games. J. reportedly struggled with social interaction and rule compliance. After being assessed for mental health services, it was determined J. met the medical necessity for services and he was participating in individual counseling with Lincoln Waitiki. Waitiki, who saw J. weekly, was working on increasing his positive social skills and respect for authority figures and rules.

Alex was described as an “absolutely adorable[,]” healthy, typical three-year-old boy. According to his caregivers, he was aggressive, had multiple crying spells, and had no boundaries with strangers. Alex also had been assessed for mental health services and was assigned to Waitiki for counseling, who was working with Alex weekly on maintaining his personal space and learning how to talk through his frustrations rather than acting out aggressively.

As part of the reunification case plan, mother and father were given a minimum of one two-hour visit per week at the Agency, which the Agency had the discretion to increase in frequency and duration. At the beginning of November 2012, the social worker increased the visitation schedule to include community visits. The family was visiting together all day on Saturdays. No concerns were reported about the visits.

The social worker recommended that mother and father receive an additional six months of reunification services. It was apparent to the social worker that the family had deep addiction issues. While mother was taking advantage of this round of services and had done well achieving sobriety, the social worker was concerned about her relationship with father, who was not forthcoming about his addiction issues and was not clean and sober. Father had been referred twice to substance abuse treatment, but he had not been serious about achieving sobriety.

At the February 26, 2013 review hearing, services for both parents were extended for six months. It was noted that father had entered a treatment program, but was discharged on February 25, 2013 for verbally attacking staff after he was confronted for being verbally abusive on the pay phone. A progress review hearing was set for April.

In a report prepared for the progress review hearing, the social worker noted the parents were living together as a couple. Mother told the social worker she needed father, who paid for everything, and that the boys were better off with both parents. Mother’s individual counseling was on hold as of April 2, 2013, but she was reportedly doing well in substance abuse treatment. Father began another recovery program, but he

was attempting to manipulate the program to get what he wanted. A subsequent request for further assessment was denied until he completed 21 days of AA/NA meetings. The progress review was held on April 29, 2013; the juvenile court remained concerned.

In the status report for the 12-month review hearing, the Agency recommended termination of services and that a section 366.26 hearing be set to consider a permanent plan of adoption. Mother had entered Redwoods Family Center on May 15, 2013, but walked out on her own on June 19, 2013. She called the social worker on July 2, 2013 to say she was living part-time with her sister and part-time with father, and asked that her mail be sent to father's address. She did not ask to see the boys or when family visits would resume. Visits were scheduled only after the social worker asked if she was interested. Father had attended the AA/NA meetings and was engaged in the Stanislaus Recovery Center program. He was sporadically attending co-parenting sessions with mother.

The boys both had physical examinations on March 27, 2013; no concerns were noted. Neither was a regional center client. J. had begun third grade and was receiving resource assistance for English and Math, while Alex had started a Head-start program and was adjusting to a full school day. In July 2013, at the foster mother's request, J.'s doctor took him off all his medications, which consisted of Vyvanse, Mirtazapine and melatonin, to determine how he would do. Thereafter, the foster mother reported he was finally a normal eight-year-old boy with "raw emotions" and appeared to be happier, fun and loving. The social worker had seen a dramatic positive change in J. since being taken off the medications and even J. stated how much better he felt.

The boys remained in the same foster home, where they were doing exceptionally well. They had bonded with their caregivers and were happy in the home. The caregivers were committed to providing permanency through adoption if the boys were unable to return to their parents' care.

The report detailed a visit that occurred in the community on April 30, 2013. Mother wanted to borrow money from her new boyfriend, who was an active drug user. Father became upset and grabbed mother's phone from her hand to call his mother so he could purchase food for the children. Mother hit him. J. was so scared he grabbed Alex and hid in the closet. It was after this that mother entered Redwoods Family Center, where she received day visits with the boys, which visits ended when mother walked out of the program. Visits were returned to the Agency in July 2013, after father, in a car with a suspended driver's license and no proof of insurance, transported the boys from the community meeting place to another location.

The Agency filed an additional information report before the review hearing. The social worker stated that father had called her on August 21, 2013 demanding she meet with him to explain the recommendations in her report. Father became uncontrollably angry and verbally abusive when the social worker told him she could not meet on such short notice. When the social worker shared father's reaction with father's substance abuse counselor, the counselor stated it sounded like father was out of control, and was reacting to the information and unable to appropriately process what was happening. According to the counselor, this behavior is typical of a client who will start using or is using again.

A contested 12-month review hearing was held on September 17, 2013. The juvenile court terminated reunification services and set a section 366.26 hearing.

On November 4, 2013, the Agency filed a request to administer psychotropic medication to J. In his accompanying statement, the prescribing physician stated that while J., who was diagnosed with ADHD, anxiety disorder, and an unspecified learning disorder, had been off his medications since June 2013, it had become evident he was struggling in school, and was easily distracted and impulsive. The physician recommended trying Adderall, a shorter-acting stimulant, to address J.'s ADHD symptoms. The juvenile court granted the request on November 18, 2013.

In November 2013, mother and father both filed section 388 requests asking the juvenile court to order a bonding study. The Agency did not oppose the requests, with the understanding the parents would arrange for the appointment and for payment. The juvenile court found that reasonable and granted both requests, and ordered that the boys be made available for bonding studies.

The section 366.26 WIC report, filed on January 7, 2014, recommended termination of parental rights and adoption as the boys' permanent plan. In evaluating the boys, it was noted that neither had medical concerns. On January 6, 2014, the social worker made a referral to Valley Mountain Regional Center for the boys, as they were exhibiting social and developmental delays. J., who was in the third grade, was struggling in school and unable to keep up in class; his retention factor was not at a third grade level and he could not work independently. An IEP meeting was scheduled for January 15, 2014. Alex was struggling with maintaining focus in his Head-start program; he had difficulty following instructions and directions both at home and in school.

The boys were in their third placement since detention, where they had lived since January 2013. The foster parents, Mr. and Mrs. B., had grown to love the boys and wanted to adopt them. The boys were also attached to them, calling them "Nana" and "Grandpa." The social worker stated Mr. and Mrs. B. were "very likely to adopt" the boys if given the opportunity to do so. The assessment of Mr. and Mrs. B. stated that they both "Live Scanned" for adoption purposes on December 5, 2013. The Department of Justice rejected Mrs. B.'s fingerprints because they were of poor quality. While she had been "Live Scanned" again, the Agency had not received the results. Mrs. B., however, had been cleared through the foster home agency when the B.s became certified through the Agency about two years before. Mr. B. had no history of criminal behavior, or child abuse or neglect. A review of the "CWS/CMS" database revealed no history of child abuse or neglect referrals for Mrs. B. The social worker noted Mr. and Mrs. B. appeared to be fully committed to adopting the boys; they had provided all the necessary



adoption paperwork and were pending adoption home study interviews. An approved adoption home study would probably be completed within the next two months. The adoptions social worker had not interviewed the boys about their thoughts on adoption. The social worker who prepared the report, however, noted the boys need not have been actively involved in the development of the plan for permanent placement because they were too young.

According to the social worker, Mr. and Mrs. B. were doing an excellent job meeting J.'s mental, psychological, and educational needs, and had committed time and energy to care for the boys. While J. was likely to struggle with his mental stability throughout his life, he was receiving the medical and developmental care he needed to remain as healthy as possible, and was benefiting from a loving, nurturing and stable family.

The bonding assessment prepared by Jeffrey E. Miller, Ph.D., at the request of mother's counsel, was attached to the social worker's report. Dr. Miller assessed the degree of bonding and attachment between mother and the boys. Dr. Miller observed the boys with their mother individually and then together at mother's attorney's office, in a sparsely furnished room supplied with specific toys that Dr. Miller brought. At the end of the session with mother, J. suddenly and unexpectedly broke into tears when it was time for mother to leave; he did not want to separate from mother. Mother unsuccessfully tried to console him. When she left, J. went over to the office window to watch mother leave. He continued to sob loudly for five minutes. Eventually he was willing to participate in an interview and evaluation with Dr. Miller, but he was quiet and responded to most questions by shrugging his shoulders. J. appeared to be distraught and traumatized over the separation from mother. Dr. Miller had never seen this type of strong emotional and tearful response by a child J.'s age and opined he was depressed and having difficulty coping with separation from mother.

Dr. Miller interviewed Mrs. B. When first placed in her home, J. would often sit in the corner and was very lethargic. He appeared overmedicated, and was both enuretic and encopretic. He was reluctant to communicate or talk with others, and typically talked in a low tone of voice. He appeared to be socially immature and showed a lack of social awareness. While he appeared to love his parents and looked forward to their visits, he also expressed fears and concerns about his father “beating up” mother. J. cherished everything his parents gave him during visits, but never talked about his parents between visits or asked to see them. Mrs. B. saw J. as an emotionally fragile boy. J. had a good relationship with Alex and was protective of him; he was “very tolerant” of Alex and never lost his temper with him. When Alex came to her home, he was still wearing diapers and had diaper rash, and cried a lot over the separation from his parents. He had a “good disposition,” but was also “skittish” and “whiney.” Alex was more talkative than J., and told Mr. and Mrs. B. about having to hide in the closet with J. when his parents were fighting.

Dr. Miller also spoke with the boys’ therapist, Waitiki. Initially Waitiki saw the boys weekly, but was now seeing them once every two weeks. With J., Waitiki was focusing mainly on his problems with peer and adult relationships at school. At times, J. was disruptive and inattentive due to his ADHD, and had been resistant to following adult direction and taking turns with peers. His behavior at school had improved over the past year; he was less aggressive. Waitiki had not seen any evidence that J. had a social-developmental disorder, such as Asperger’s; he was diagnosed with ADHD and PTSD. Alex, who had a past history of oppositional and defiant behavior, initially was diagnosed with PTSD and “rule-out of reactive attachment disorder of infancy,” but his attachment with Mr. and Mrs. B. had improved and he no longer appeared to have reactive attachment disorder. Waitiki had not seen any evidence of ADHD in Alex.

Dr. Miller opined that both boys had a substantial, positive emotional attachment to mother such that they would suffer emotional detriment if parental rights were

terminated. Dr. Miller believed J. was at high risk for developing long-term emotional and attachment problems, and opined J. should have a comprehensive psychological evaluation by a psychologist with expertise in assessment of children with possible depressive disorder and autism spectrum disorder.

The section 366.26 hearing was continued so the Agency could obtain a second bonding study. The second bonding study, completed by Cheryl K. Carmichael, Ph.D., was filed on March 19, 2014. Over the course of a little over a month, Dr. Carmichael interviewed the parents twice and Mrs. B. once, had a session with Mr. B. and the boys, had a session with the boys by themselves, and observed a visit between the parents and boys.

Mrs. B. told Dr. Carmichael that when the boys came to her home, they showed signs of significant developmental and emotional impairment. J. was quiet, meek, skittish, hid under tables, sat in corners and barely spoke. He picked at his skin and rubbed his knuckles raw with the metal edge of pencil erasers. She believed part of the problem was due to the medications he was taking. Once he was weaned off his medications, he became more alert, smiley, interested and cooperative, and picked less at his skin. He started taking Adderall in December 2013 because his attention and concentration were so impaired that his school performance declined. The results had been good. Mrs. B. said J. was sweet, kind and honest.

Mrs. B. said Alex was not toilet trained when he was placed with her. He was affable and friendly, but easily startled, whined and cried. He had no self-care skills, little language, multiple developmental delays, and his attention span was extremely limited. Since being placed in her home, he was fully toilet trained, able to dress himself, and ate properly. He slept better and attended preschool, where he loved to play. He had behavior problems with his peers due to his impulsiveness. He loved to be a helper, was more appropriately socially cautious, and was developing a love of science. The boys played well together, although Alex tended to run roughshod over J.

J. had his triennial IEP in January 2014, which was very clear about his significant educational needs. Of primary concern were his basic cognitive impairments coupled with significant language deficiencies. The psycho-educational report revealed that J.'s functional ability remained in the borderline range, but his slow and steady improvements while in the current foster home indicated the home's stability had provided him with optimum conditions for academic and social growth. J. had significant difficulties in the areas of expressive and receptive language, which could be an issue for both his social and academic growth. After reviewing the school assessment and completing the bonding study, Dr. Carmichael did not find evidence of a developmental disorder in the autism spectrum; instead, the evidence lead to the conclusion J. had intellectual limitations, receptive and expressive language delays, and significant ADHD. Alex was going to be evaluated for ADHD. While it was unclear what other services he might qualify for, his developmental rate within the home was accelerating.

During the parents' visit that Dr. Carmichael observed, the boys threw themselves at their parents, but then wanted the Easter baskets the parents brought. J. seemed disappointed most of the time and was critical of what was in his basket. His parents apologized a lot for not pleasing him. Alex dumped the contents of his basket out and was chaotic in his approach to what had been brought. Alex did not seem connected emotionally to his parents during the visit and was interested only in playing, quite happily, by himself.

When Dr. Carmichael observed the boys and Mr. B. together, the boys were immediately cooperative with Mr. B.'s request to sit down, looked at Dr. Carmichael and answered her questions. Dr. Carmichael was impressed with the boys' manners while they were playing. Both boys said they liked to play with their parents best of all, but also said they liked to play with their foster parents best of all. Neither boy could or would articulate concerns about either household.

In regard to the bonding question, Dr. Carmichael opined the boys related to their parents as playmates, using emotions to “get their way,” and losing behavioral control in the process. In contrast, the boys interacted with Mr. and Mrs. B. with obvious interest in what they had to say and what they could learn. She saw a marked difference with J., who appeared mesmerized by his quiet learning time with Mr. B. Alex participated, and while he lost interest, he did not grab at whatever he wanted. Dr. Carmichael further opined that termination of the parent/child relationship would cause confusion and sadness in the short term. She believed Alex’s short and long-term memory were impaired and his attentional issues made projection of emotional reactions difficult; he was a child of the moment who was okay with either his parents or his foster parents as long as he could play with what he wanted. J. was more self-contained, but his language was not expansive enough to allow him to express his thoughts and feelings regarding his past or future. She did not believe he internalized his feelings; instead, he would forget about experiences because he cannot explain them and go onto something else, except for his visceral memory of fear associated with language. Dr. Carmichael believed he needed separation from his parents to slowly integrate his language and feelings so he can come to terms with his past.

In an addendum report filed on May 28, 2014, the Agency reported that the social worker met with Waitiki, who stated that the boys were well adjusted in their foster home and told him they love their placement. Waitiki met with the boys, separately and privately, every two weeks, either at home or school. The boys were thriving in their home with Mr. and Mrs. B. The social worker met with the boys on a monthly basis, separately and privately, at the current foster home. They had both said they love “Nana and Papa.” They had never asked about or for their parents or about family visits.<sup>3</sup> They

---

<sup>3</sup> A visitation log attached to the section 366.26 WIC report, however, did state that during a social worker’s home visit in December 2013, J. mentioned missing his mom. Mrs. B. told the social worker the boys had never asked for their parents until

appeared to be well-adjusted to the family and the house, and appeared happy, healthy and well-groomed.

The contested section 366.26 began on June 12, 2014 and concluded the following day. The Agency submitted on the reports. Mother's attorney called Dr. Miller to testify about the bonding study he prepared. In his opinion, he thought there was a significant parent-child relationship between mother and the boys, and it would benefit both boys to have continuing contacts with mother, but especially for J. due to his attachment to mother. Dr. Miller was concerned that J. would internalize his depression and about what would happen to him long-term if he had no further contacts with mother. Dr. Miller reviewed Dr. Carmichael's bonding study. He saw problems with her study and prepared a written critique of it, in which he opined that Dr. Carmichael did not do an adequate or comprehensive assessment. Dr. Miller admitted detriment to J. could be determined even without knowing whether he had autism spectrum disorder. It had been six months since Dr. Miller's evaluation and his conclusion could change if he had updated information.

Father testified about some photographs that were taken of himself, mother and the boys during the dependency case, which were admitted into evidence.

The Agency called Dr. Carmichael as a rebuttal witness to testify about her bonding assessment. She explained that, based on the character of the relationship between the parents and boys in the context of the boys' connection with other adults and children, she concluded the boys' connection with their parents was more like playmates or peers. She came to a different conclusion than Dr. Miller because she uses a broad-based approach that considers as much information in as broad a context of relationships as possible so she can reach a reasonable conclusion about how the boys were bonded in

---

recently, which Mrs. B. attributed to J.'s aunt visiting him at school and the boys' unsupervised visits with their parents, during which the parents had cried in front of the boys and told them how much they missed them.

the beginning and connecting with people at that point. The most important aspect of her review of the school's assessment was that J. actually did very well socially, which would be unlike most autistic children. But he was functioning at a very limited intellectual capability and had significant speech issues. In her clinical opinion, J. did not have symptoms of autism. Dr. Carmichael did not see J. as being specifically angry or depressed, although she would not be surprised if he had low-level depression.

The foster mother, Mrs. B., also testified as a rebuttal witness. Mrs. B. testified the boys had lived with her for a year and a half. She disagreed with Dr. Miller's testimony that J. was an angry and depressed child, and did not agree that he was emotionally fragile. J. was no longer engaging in self-destructive behavior. To Mrs. B.'s knowledge, J. was not autistic nor did he have a social disorder. Mrs. B. spoke to an intake person with Valley Mountain Regional Center, who took some information over the phone and sent her a packet. The intake person told her that, according to the information Mrs. B. provided on the phone, J. did not meet the criteria to be considered autistic. Mrs. B. was willing to adopt the boys. Based on her 12 years of experience as a foster parent, Mrs. B. did not think J. was emotionally fragile because J. "just comes across as a little boy who loves life." She could not recall whether she told Dr. Miller J. was emotionally fragile, but she did not believe he currently was. Concerns were expressed at the latest IEP meeting regarding J. having trouble socially at school; he had trouble interacting with his peers at the same age level. J. was working to the best of his ability at school; there had not been any incident reports at school within the past six months.

In closing, County Counsel and the children's attorney both argued the boys were definitely adoptable and there were no exceptions to termination of parental rights. Mother's counsel argued there was insufficient evidence the boys were likely to be adopted due to the boys' fragile emotional state, which showed they were not emotionally ready to be adopted. Mother's counsel further argued the beneficial parent-child

relationship exception applied, as the boys would experience detriment if parental rights were terminated. Father's counsel joined in this argument, and further argued there were some things missing from the social worker's report that were needed to move forward, namely an approved adoption home study and the results of Mrs. B.'s scans. Both mother's and father's counsel asked that the boys be placed in legal guardianship.

The juvenile court found that both of the boys had been out of mother's home for almost half their lives. The juvenile court questioned Dr. Miller's study, finding it was based on the one incident where J. sobbed uncontrollably after mother left, which appeared to be an isolated episode that did not necessarily reflect how J. felt. It appeared to the juvenile court that the boys were doing very well in the foster home and, if the boys were not generally adoptable, it did not believe the foster parents would have kept the boys in the home of the last year and a half, or be willing to adopt them. The juvenile court believed the boys were too young to have their wishes considered as to adoption. It found that neither parent had a positive parental relationship with the boys, and that the mother/child relationship was not so significant that its termination would cause the boys true detriment. Instead, the boys desperately needed permanency before it was too late.

The juvenile court found the boys generally adoptable and that, by clear and convincing evidence, it was very likely they would be adopted. The juvenile court further found the parents had not met their burden of showing that termination of parental rights would be detrimental, and therefore found termination would not be detrimental. The juvenile court ordered adoption as the permanent plan and terminated parental rights. The juvenile court permitted the Agency to arrange a final visit for mother and the boys, and a separate final visit for father and Alex.

### **DISCUSSION**

Mother challenges the finding the boys are adoptable. Relying on the boys' mental, psychological and educational histories, she contends they are not generally adoptable. According to mother, any analysis of the likelihood of the boys' adoption



depended solely on Mr. and Mrs. B.'s desire to adopt them. Under these circumstances, mother further claims the juvenile court was foreclosed from finding the boys specifically adoptable because the Agency failed to provide it with current information on the boys' medical, developmental, scholastic, mental and emotional status, Mrs. B.'s criminal and child welfare records, and a statement of the boys concerning their placement. Mother asserts that without this information, it cannot be determined whether there was substantial evidence to support the juvenile court's finding of adoptability. She concludes, therefore, that she is entitled to reversal.

Both the evidentiary standard that applies to this issue in the juvenile court and our standard of review on appeal are well settled. At a section 366.26 hearing, the court must determine by clear and convincing evidence whether it is likely the minor will be adopted. (§ 366.26, subd. (c)(1).) If the court finds a likelihood of adoption, the court *must* terminate parental rights, unless one of the statutory exceptions to adoption exists. (*In re Celine R.* (2003) 31 Cal.4th 45, 53 (*Celine R.*) [if evidence at section 366.26 hearing shows child is likely to be adopted, juvenile court "must order adoption and its necessary consequence, termination of parental rights, unless one of the [statutorily] specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child."]; *In re A.A.* (2008) 167 Cal.App.4th 1292, 1320 (*A.A.*).)

"Although a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is 'likely' that the child will be adopted within a reasonable time. [Citations.] We review that finding only to determine whether there is evidence, contested or uncontested, from which a reasonable court could reach that conclusion. It is irrelevant that there may be evidence which would support a contrary conclusion." (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.) In other words, on appeal, "the clear and convincing test disappears and 'the usual rule of conflicting evidence is applied, giving full effect to the

respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1526 (*I.W.*)). Moreover, we review the record in the light most favorable to the juvenile court's findings, and draw all inferences from the evidence that support the court's determination. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1177.)

“The adoptability issue at a section 366.26 hearing focuses on the dependent child, e.g., whether his or her age, physical condition, and emotional state make it difficult to find a person willing to adopt.” (*A.A.*, *supra*, 167 Cal.App.4th at p. 1311.) “It is not necessary that the child already be in a potential adoptive home or that there be a proposed adoptive parent ‘waiting in the wings.’ [Citation.] [¶] Conversely, the existence of a prospective adoptive parent, who has expressed interest in adopting a dependent child, constitutes evidence that the child's age, physical condition, mental state, and other relevant factors are not likely to dissuade individuals from adopting the child. In other words, a prospective adoptive parent's willingness to adopt generally indicates the child is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family.” (*A.A.*, *supra*, 167 Cal.App.4th at pp. 1311–1312.)

Having reviewed the record as summarized above, we find no support for mother's claims. At the time of the section 366.26 hearing, the boys were healthy and doing well in their adoptive home. Eight-year-old J. was described as a handsome, enjoyable, sweet, kind and honest boy. Although J. had been diagnosed with ADHD, PTSD, and an anxiety disorder, his behavior at home and school, as well as his mental state, had improved as a result of ongoing therapy and medication. He was not angry, depressed or emotionally fragile, and no longer engaged in self-destructive behavior. J.'s IEP showed that he had cognitive impairment and significant language deficiencies, and that he struggled to keep up with the third grade material, but he had made slow and steady improvements, and worked to the best of his ability. While the Agency had

submitted a referral to the regional center over concerns about social and developmental delays, the regional center determined J. did not meet the criteria for autism, Dr. Carmichael did not find evidence of a developmental disorder on the autism spectrum, to Mrs. B.'s knowledge J. was not autistic and did not have a social disorder, and the school's assessment showed J. did very well socially.

Four-year-old Alex, who was described as absolutely adorable, affable, and friendly, had a history of oppositional and defiant behavior, and initially was diagnosed with PTSD and possible reactive attachment disorder of infancy. He later was found not to have reactive attachment disorder as he was able to attach with Mr. and Mrs. B. while in their care, and his other conditions improved after receiving therapy. Alex was struggling to maintain focus in his preschool program, and had difficulty following instructions and directions both at home and in school. While he was going to be evaluated for ADHD, his rate of development within the home was accelerating and there is nothing in the record to suggest that his behavior was so severe it could not be managed.

Mr. and Mrs. B. were well aware of the boys' educational and therapeutic needs, and were actively engaged in meeting them. Mr. and Mrs. B. had grown to love the boys and wanted to adopt them. The boys also were attached to them, calling them "Nana" and "Grandpa." They were committed to providing the boys with a permanent home.

Given the boys' positive attributes, the progress they were making in overcoming their behavioral and emotional problems, along with the prospective adoptive parent's willingness to adopt them, the juvenile court properly could find it was likely the boys would be adopted. (§ 366.26, subd. (c)(1).)

Mother asserts there was insufficient evidence of adoptability because the Agency did not present any evidence that other families had expressed an interest in adopting children with the boys' specific characteristics. We reject mother's claim that such evidence is required to show adoptability. The only case she cites for this proposition, *In*

*re Michael G.* (2012) 203 Cal.App.4th 580, 592, does not state that such evidence is required, only that it existed in that case. To the contrary, a prospective adoptive parent's willingness to adopt generally indicates the child is likely to be adopted within a reasonable time by either the prospective adoptive parent or some other family. (A.A., *supra*, 167 Cal.App.4th at pp. 1311-1312.) That is the case here; Mr. and Mrs. B.'s willingness to adopt the boys generally indicated they are likely to be adopted within a reasonable time.

Mother next claims the adoption assessment was inadequate because (1) it failed to include whether a recent rescreening of Mrs. B.'s criminal record and prior referrals for child abuse or neglect had been completed, and therefore the Agency failed to establish that a legal impediment to adoption by Mr. and Mrs. B. did not exist; (2) it failed to update the results of the boys' regional center assessments; and (3) it did not contain any statements from the boys concerning placement and adoption. Apparently recognizing that she cannot object to the adequacy of the adoption assessment on appeal because she failed to do so below, mother asserts that because of these failures, it cannot be determined from the record that there was substantial evidence to support the boys' adoptability finding. (A.A., *supra*, 167 Cal.App.4th at p. 1317 [a parent who fails to object to the adequacy of the adoption assessment below forfeits any objection to its adequacy on appeal].)<sup>4</sup>

This argument, however, is based on a legally faulty premise. Ignoring the boys' positive attributes and their progress in addressing their emotional and behavioral

---

<sup>4</sup> Father's counsel did assert in closing argument that "[w]e also don't have some of the things that we need necessary to move forward, . . . which is I do not see an approved adoption home study, I don't see the result of Ms. B.'s Live Scan, and I don't see the result of the CCA 1 scan, as well." Neither father's nor mother's counsel, however, objected to the adoption assessment on the ground that it failed to comply with the statutory requirements stated in section 366.21, subdivision (i)(1).

problems, mother claims the boys could only be considered adoptable because a particular family is willing to adopt them. She contends the boys are only specifically adoptable, not generally adoptable, and under the decision in *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1062 (*Carl R.*), Mr. and Mrs. B.'s suitability to adopt is at issue here.

But here the juvenile court did not find that the boys were adoptable based solely on the fact a particular family was willing to adopt them; it determined they were generally adoptable based on the boys' characteristics, as shown by Mr. and Mrs. B.'s willingness to adopt them. For this reason, whether there is a legal impediment to adoption, which father contends may exist due to the Agency's failure to report the results of Mrs. B.'s subsequent scans, is irrelevant. (See, *Carl R.*, *supra*, 128 Cal.App.4th at p. 1061 ["If the child is considered generally adoptable, we do not examine the suitability of the prospective adoptive home. . . . However, where the child is deemed adoptable based solely on the fact that a particular family is willing to adopt him or her, the trial court must determine whether there is a legal impediment to adoption."].)

Since the adoptability finding was not based solely on Mr. and Mrs. B.'s willingness to adopt, mother's reliance on *In re Jerome D.* (2000) 84 Cal.App.4th 1200 is misplaced. There, the appellate court reversed an adoptability finding that it determined was based, not on the child's attributes, but on the willingness of one person to adopt him, where the assessment failed to address that person's criminal and child protective services history, which was not insubstantial, as required by current section 366.21, subdivision (i)(1)(D). (*Jerome D.*, *supra*, 84 Cal.App.4th at pp. 1203, 1205.)

Moreover, while the results of Mrs. B.'s second scans were not reported at the section 366.26 hearing, the Agency's report noted that Mrs. B. had been cleared through the foster home agency when she and Mr. B. became certified about two years before, and the Agency reported in its addendum report filed on May 28, 2014, that the boys lived in a "certified foster family home licensed under Safe Harbor Family Services."

Since the B.'s home remained certified near the time of the hearing, the juvenile court reasonably could find that Mrs. B.'s second scan did not reveal any criminal or child protective services history. Considered together with other evidence in the record – including evidence that Mr. and Mrs. B. wished to adopt the boys, and the boys had thrived in their care over the previous 18 months – there was substantial evidence to support the juvenile court's determination that the boys were likely to be adopted within a reasonable time.

Mother's contention that there were other statutory inadequacies in the adoption assessment that show the juvenile court's adoptability finding is not supported by substantial evidence also fails. Mother relies on *In re Valerie W.* (2008) 162 Cal.App.4th 1 (*Valerie W.*) for the apparent proposition there cannot be substantial evidence of adoptability where there are deficiencies in an adoption assessment. Mother, however, does not explain how the alleged deficiencies, namely the omission of the results of Mrs. B.'s scans, an update on the boys' regional center referrals, and statements from the boys concerning placement and adoption, were sufficiently egregious so as to undermine the juvenile court's decision. (*Valerie W.*, *supra*, 162 Cal.App.4th at p. 15 [reversing order terminating parental rights based on insufficient evidence of adoptability where the "deficiencies in the assessment report were significantly egregious to undermine the basis of the court's decision."].)

When we consider the totality of the evidence, we conclude any alleged deficiencies in the adoption assessment were not so significant they require reversal. The commitment of Mr. and Mrs. B. to adopting the boys was clear and had been consistent throughout the dependency proceedings. Mrs. B.'s criminal background and child protective services history had been cleared previously, and she and Mr. B. remained certified foster parents. According to Mrs. B., the regional center determined J. did not meet the criteria for autism. The juvenile court's determination the boys were too young to have their wishes considered as to adoption is supported by the evidence that Alex was

only four, and therefore would not understand what adoption was, and while J. was nearly nine years old, his expressive and receptive language delays would make it difficult for him to say what he feels about adoption and whether he felt that was the appropriate or best plan.<sup>5</sup>

While mother approaches the question of the boys' adoptability by picking and choosing evidence from the record to support her argument, this is not an approach we may follow on review.

In sum, we agree with the following observation from *In re Jayson T.* (2002) 97 Cal.App.4th 75, 85, overruled on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414: "[I]t is only common sense that when there is a prospective adoptive home in which the child is already living, and the only indications are that, if matters continue, the child will be adopted into that home, adoptability is established. In such a case, the literal language of the statute is satisfied, because 'it is likely' that that particular child will be adopted."

For all the reasons stated above, we conclude there was substantial evidence to support the juvenile court's adoptability finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

---

<sup>5</sup> The assessment prepared for the section 366.26 hearing must include a "statement from the child concerning placement and the adoption or guardianship . . . unless the child's age or physical, emotional or other condition precluded his or her meaningful response, and if so, a description of that condition." (§§ 366.21, subd. (i)(1)(E), 366.22, subd. (c)(1)(E).)

**DISPOSITION**

The orders terminating parental rights are affirmed.

\_\_\_\_\_  
Gomes, J.

WE CONCUR:

\_\_\_\_\_  
Cornell, Acting P.J.

\_\_\_\_\_  
Franson, J.